UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA NEW ALBANY DIVISION

THE FREDERICK J. STATTS AND)	
GENEVA S. STATTS FAMILY TRUST,)	
ELIZABETH STATTS MCCREA,)	
TRUSTEE,)	
)	
Plaintiff,)	
)	
V.)	4:18-cv-00130-RLY-DML
)	
STATE FARM MUTUAL AUTOMOBILE)	
INSURANCE COMPANY,)	
)	
Defendant.)	

ORDER ON DEFENDANT STATE FARM MUTUAL AUTOMOTIVE INSURANCE COMPANY'S MOTION TO DISMISS

Defendant, State Farm Mutual Automobile Insurance Company, moves to dismiss Plaintiff's Complaint for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure. Defendant contends Plaintiff seeks an advisory opinion, and as such, there is no case or controversy warranting a declaratory judgment because no underlying claim, loss, suit, or occurrence exists. *See Ashcroft v. Mattis*, 431 U.S. 171, 172 (1977) (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 242 (1937) ("For a declaratory judgment to issue, there must be a dispute which 'calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present right upon established facts."")).

The allegations reflect that Plaintiff asked a State Farm underwriter and agent

whether Plaintiff's Rental Dwelling Policy included liability coverage for bodily injury or

property damage "loss claims" caused by Plaintiff's chromated copper arsenate treated

wood deck. (Compl. ¶ 7). They allegedly advised that the State Farm Policy excludes

coverage for pollutants. (Id.). In other words, Plaintiff asked a question about potential

liability coverage under the policy, and State Farm answered the question. There was no

underlying loss, suit, claim or occurrence. Consequently, there are no facts upon which

State Farm could make a formal determination of liability coverage. Accordingly,

Defendant's Motion to Dismiss (Filing No. 9) is **GRANTED**.

SO ORDERED this 11th day of February 2019.

^tRICHARD(L. Y�UNG, JUDGE

United States District Court Southern District of Indiana

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2